

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS  
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE  
MEMBERS: EDWARD GALLAGHER  
TONY POPOVSKI  
VICTORIA SELVA

ABSENT: DAWN SLOSSON

ALSO PRESENT: JEROME R. SCHMEISER, PLANNING CONSULTANT  
JACK DAILEY, PLANNING CONSULTANT  
COLLEEN O'CONNOR, TOWNSHIP ATTORNEY  
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:08 P.M.

1. Roll Call.

Chairman FLORENCE called the Roll Call. Member SLOSSON absent.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*  
*Note: All fees have been received and all property notices were notified by mail*

**MOTION by GALLAGHER seconded by SELVA to approve the agenda as presented.**

**MOTION carried.**

4. Approval of the previous meeting minutes:

**MOTION by POPOVSKI seconded by GALLAGHER to approve the meeting minutes of October 12, 2004 as presented.**

**MOTION carried.**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
5. Romeo Plank Investors Permanent Parcel No. 08-17-402-004 08-17-477-001	Section 10.0504(A) and (B) Chapter 17 Land Division 08- Ordinance
6. Frank D'Anna Permanent Parcel No. 08-24-201-001 08-24-201-004	Section 10.0504(B)
7. Mark and Sharon Jensen Permanent Parcel No. 08-18-176-005	Section 10.0311(F)(5)
8. Thomas Becher Permanent Parcel No. 08-21-326-001 08-21-376-001	Section 10.0404(A)(6)
9. MSC Land Development Permanent Parcel No. 08-17-201-002	Section10.0704(A)(3)(b)&(c)
10. AC Enterprises	Section10.0704(A)(3)(b)&(c)
11. Sims Road, LLC Permanent Parcel 08-20-100-018	Section 10.2107(D)(1)
12. Macomb Intermediate School District Permanent Parcel No. 08-16-100-017	Section 10.0404(A)(6)
5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE; Permission to vary section: 10.0504A and 10.0504B and 17-162 (a)(viii) Located on East side of Romeo Plank North of 23 Mile Road and on the North side of 23 Mile Road, East of Romeo Plank Road; Section 17; Romeo Plank Investors, Inc., Petitioner. Permanent Parcel Nos. 08-17-402-005 & 08-17-477-001	

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

This matter was considered by the Zoning Board of Appeals (Board) at its special meeting of October 12, 2004. After considerable discussion, the Board tabled the matter to the

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

regular meeting of November 9, to provide the Board members an opportunity to review the materials submitted by the applicant.

The issue before the Board is based upon a request by the applicant to split a parcel and combine one of the resulting new parcels created with an adjoining parcel without first removing the non-conforming status from the parent parcel. The Township Land Division Ordinance (LDO) Sec. 17-162(a) (viii) requires:

“compliance with all other applicable Township Ordinances, codes, provisions, standards, rules and regulations, etc. which regulate and control the division and/or development of land.”

All requests for splits/combinations in the Township are reviewed in accordance with Sec. 17-163 of the LDO; paragraphs (a) through (f). It should be noted that paragraph (c) requires that the Assessor shall transmit the completed application for split/combination to Township department heads, planners and the fire inspector for review and comment. There is never an instance that the Township Assessor makes a determination without input from other Township departments. With respect to the subject application the Township Building Official and the undersigned reviewed and made comment to the Assessor. The Township Assessor, Phyllis Sharbo based upon reports from the undersigned and the Building Official made the determination that since the parent parcel is non-conforming and the application for split did not contain any information relating to plans on the part of the applicant to resolve the non-conforming status of the subject parcel then the proposal as presented would not be in compliance with applicable Township Ordinances which regulate and control the development of land. As a result of that finding the assessor rejected the split pursuant to Sec. 17-162 (a) (viii) of the Land Division Ordinance.

Further, Sec. 17-165 provides that:

An applicant who is aggrieved by a denial or other action Pursuant to Article V may appeal to the Township Zoning Board of Appeals pursuant to the procedure as contained in the Zoning Ordinance for appeals to the Zoning Board of Appeals.

The applicant through its representatives Mary Ann Lamkin, AICP and Ed Dushae, Esq. made a detailed presentation to the Board at the October 12, 2004 meeting. The presentation in summary stated that the Township through its (LDO) and its Assessor did not have the authority under the State Land Division Act (LDA) to deny the applicant the right to divide the subject parcel as requested. It is the opinion of the applicant through the representatives that the division as requested was in step with the State LDA and the Township through its assessor should grant the request.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

The petitioner is requesting that a parcel of land fronting on 23 Mile be combined with the east portion of a parcel fronting on Romeo Plank. The river splits the parcel fronting on Romeo Plank with the west portion of the property currently being utilized for the Wade Nursery. The east portion, on the east side of the river, is vacant. The Wade Nursery is a non-conforming use developed many years ago. The Wade Nursery does not meet the current standards for land development. The property is zoned R-1-S, which does not permit a nursery type use (Open Air Business). The Wade Nursery in its present state provides no paving for parking, has a full width driveway on Romeo Plank, has no sidewalks, has no walls or greenbelts where it abuts residential uses, has no by-pass or deceleration lanes as approved by the Township Engineer and may not meet all other applicable fire and safety codes.

The Zoning Ordinance as currently written requires an "Open Air Business Use" to be located in a C-2 zone. The Zoning Ordinance further requires regulated curb cuts, sidewalks, walls and or greenbelts where the property abuts residential, paved parking areas, by-pass and deceleration lanes and compliance with all fire and safety codes.

**RECOMMENDATION:**

It is recommended that the variance requests for both the Zoning Ordinance and Land Division Ordinance be denied for the following reasons:

1. Compliance with all other applicable Township Ordinances codes, provisions, standards, rules and regulations which regulate and control the division and/or development of land would not unreasonably prevent the owners from using the property. In this case the split/combo request could be approved if the Wade Nursery property would be brought up to Macomb Township standards; i.e., Zoning Ordinance, Road Development Improvement and Engineering Design and Construction Standards and fire codes. Other new parcels created for nurseries and structures planned in Macomb Township will be required to comply with applicable zoning and development requirements, which is evidence that the proper standards would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the development of nurseries in Macomb Township. Other owners are or will be required to comply with all applicable development codes and ordinances. As a result the other property owners do not have the opportunity to make use of improperly zoned land or be relieved from the requirement of complying with Township development standards.
3. There is nothing unusual about the parcel in question that sets it apart from other parcels in the area or in Macomb Township. There is nothing to prevent any part

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

of the property from being developed in accordance with the standards of Macomb Township. For example, there are no significant grade differences or natural features such as a stream on the west portion of the property fronting on Romeo Plank or wetland to prevent full use of the west portion of the parcel according to the ordinances as written.

The undersigned could recommend support for the development of the property if a proposal is presented that can meet the zoning and development codes of the Township. It is recognized that the current proposal is an attempt for the petitioner to develop the east side of the river with a use separate from the west side of the river. However, the application makes no attempt to address the non-conforming status of the parcel on either side of the river including the Wade Nursery. It is therefore necessary that a commitment be made by the owners of subject property to comply with the Zoning Ordinance for Open Air Business Uses, development standards of the Township and the standards of the Land Division Regulations for both sides of the river including that portion continued to be used by the Wade Nursery. Total plans are necessary to give the Township assurances that both sides of the river will meet the zoning and planning provisions of the Township.

Chairman FLORENCE stated that he was going to read an additional letter in its entirety from the law offices of Seibert and Dloski dated November 4, 2004 which was addressed to the Zoning Board of Appeals as follows:

“Pursuant to your direction, we have researched the issue of whether land division and resulting parcel(s) must meet all applicable township ordinances, codes, and planning requirements at the time of the land division. Our review has included legal research of applicable state statutes, appellate decisions and the Township ordinance and codes.

**The State Land Division Act – relevant sections**

Pursuant to §109 of the State Land Division Act (“SLDA”), a municipality shall approve or disapprove a proposed land division within 45 days after the filing of a complete application for the land division with the assessor or other designated municipal official. The application must be approved if certain requirements are met. §109 (5) of the SLDA **permits the governing body of a municipality having authority to approve or disapprove a division to adopt an ordinance setting forth the standards for approving or disapproving the proposed division.** Pursuant to §109(6) of the SLDA, approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations.

Based upon the language in the SLDA, especially the language set forth in §109 (5) and (6), it is our professional opinion that the Michigan legislature intended that all zoning code and planning requirements be met at the time of the land division. In fact, MCLA 560.109 (5) and (6) specifically allow the governing body of the municipality to adopt an

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

ordinance setting forth the standards for approving or denying a land division. There is nothing in the SLDA that bars the Township from enacting an ordinance requiring that the land division and resulting parcels comply with all applicable codes and ordinances at the time of the land division.

**The Township Land Division Ordinance**

Macomb Township has adopted an ordinance setting forth the standards for dividing, partitioning and splitting land. Specifically, §17-163(e) and (g) of the Macomb Township Land Division Ordinance (LDO) require the assessor to approve the division if it meets the requirements set forth in §17-163 **and it there is compliance with all other applicable township ordinances, codes, provisions, standards, rules and regulations.** Accordingly, the assessor must deny a division of land if the resulting parcel does not meet applicable ordinances and codes such as setback requirements, frontage requirements and minimum lot size.

**Applicable Case Law**

The Michigan Court of Appeals, in an unpublished opinion, Slater v DeWitt Charter Township, 2004 WL 691757 (Mich App) ruled that **municipalities have the authority to deny a division of land because it did not meet the requirements of DeWitt Township's zoning ordinance.** In Slater, Plaintiffs argued that the Defendant municipality had no authority to prescribe the additional requirement for land division of the Defendant's zoning ordinance that requires new lots to have frontage on a public street, which was not a requirement of the SLDA. The court disagreed with Plaintiffs, ruling that MCLA 125.271 give the municipality "the broad authority to zone for public health, safety and welfare..This includes the authority to enact ordinances pertaining to roadway standards." The Court in Slater held that:

"Plaintiffs' proposed lot division does not meet the requirements of the SLDA because it does not meet the requirements of the defendant's zoning ordinance."

In applying Slater to the instant case, it is clear that a parcel split must meet all applicable township ordinances and code requirements at the time of the land division, and that municipalities have the authority to prescribe additional requirements for land divisions.

Ed Boucher, Attorney for petitioner, was in attendance and presented a few brief points that they do note that the agenda and the opinion notes they are seeking a variance. He indicated they are appealing pursuant to Section 17-165 of the Land Division Ordinance, we are not seeking a variance and in fact Section 17-46 of the Land Division Ordinance expressly excludes Land Divisions from its variance Section. There is a special section in the ordinance that covers variances, Land Divisions are excluded from that. We are

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

here tonight on an appeal. Secondly, he felt that it was necessary to read the entire subsection 5 of the Land Division Ordinance which plainly sets forth the parameters that municipalities can use when they adopt a Land Division Ordinance.

Chairman FLORENCE interjected by stating that that had clearly been stated at the last meeting and he would rather not go through that detail again if he did not mind.

Ed Boucher, quickly pointed out that it states that municipalities can adopt an ordinance setting forth the standards in Section 109 1(b) (c) and (d)-they deal with the depth ratios, width ratios and area. It does not state anything about Zoning Ordinances. In fact the LDA plainly divorces the requirement that the resulting parcels meet zoning ordinances from the consideration. Subsection 6 of 109 states that very plainly. We would also point out that the western part of Mr. Wades parcel is not considered, you can't extinguish that nonconforming use with this division. We point out that the Township Zoning Act requires Townships to provide in their Zoning Ordinances for the completion, restoration, reconstruction, extension or substitution of non-conforming uses upon reasonable terms set forth in this Zoning Ordinance. This reflects a constitutional requirement that con-conforming uses may continue if they are of the same substantial size and nature. This division passes that test. In other words, even if you could consider zoning of the resulting parcel, this division would meet the constitutional tests that the Township has required to adopt. Mr. Wades land is getting smaller and Mr. Wades non-conforming use itself is not changing in size or scope. It must be permitted to continue under the Township Zoning Act. The problem here is the Township existing Zoning Ordinance would flunk the test to meet this constitutional standard. The Townships ordinance says that non-conforming uses shall not be enlarged, altered or changed in area. This is in derogation of state law for two reasons. First of all in this instance its requiring the elimination of a use that has unchanged in size or scope. Secondly, its requiring us to apply for a variance from Mr. Wades current use. In others we would have to apply for a variance to do something that is already going on and is already permitted. I think that requiring somebody to show undue hardship is not a reasonable term as it is contemplated by the Township Zoning Act. I finally point out that denial of our application for a division will subject us to incur substantial damages. This lot is in the middle of our proposed development and it is holding up the entire thing. We have made substantial investments and have ascertainable expectations of income based upon this project. We will have no option but to seek damages upon denial of this.

Member GALLAGHER stated he wanted to make a couple of comments. He stated that at the last meeting the Board had been asked if they had made decisions on interpretation of the Ordinance in the past. He wanted it known that they have, numerous times. He stated he had also wanted to know some of the experience the Board has. Mr. Gallagher reviewed his experiences on the Zoning Board of Appeals and the Planning Commission. He noted the variance request is no different from the many, many, many that we have made before. People have come in here and asked for a variance, said what there going

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

to do, and I'm not saying all the time but, most of the time they got what they wanted. But when you come in here and say your going to this, or were going to go to court, or your going to do this, or were going to court, that doesn't get nobody any place. That just does not get nobody any place. You say our ordinance are no good, none of them are legal, that's just your opinion. That all it is, just an opinion. Doesn't mean a thing. You can say anything is illegal. The lights are to far apart, that's just your opinion. It doesn't mean a thing. You sit here and criticize this board, or the Planning Department, its stupid.

Member SELVA stated the Land Division Act does not preclude the Township from making, from our interpretation anyway, my interpretation from making any kind of specific on the Township's end of it. In the case that was cited, the case was ruled because of safety, welfare and public health. Those are also the same things that were cited in the non-conforming parcel-the road, the pavement and the approaches stuff like that. I think the township is well within its rights to make those kinds if judgments and make the judgments based on this ordinance.

Chairman FLORENCE stated he wanted to rehash the information that was given in the opinion given by the Planners that if Wade Nursery does come to us with a proposal to meet those standards that we would very seriously consider granting this division. That is the biggest part of the question, what is going to happen with the remainder of the Wade Nursery property, and how can it be brought up to the standard, because it is currently not meeting the standard as a nonconforming parcel.

Member GALLAGHER stated that when this split will not change Wade Nursery's operation, I've known Don Wade for years. He served on this Planning Commission. He grew part of nursery stock in those fields. So when you say your going to sell that off and its not changing his operation, it is. Now, he is buying more than he is raising. It is changing his operation. He may have grown corn on some of it, but he also grew some of his nursery stock on other parts of it. So now he is not going to have that property to grow his nursery stock. Now that means he has to buy more in. That's not different than a used car or a new car dealer. He is buying it and selling it, buying it and selling it.

Member POPOVSKI stated there has been a lot of discussion back and forth regarding whether or not its a variance versus an appeal. The interpretation of this Board is going to strictly take in all of the information that has been presented to us and based on our knowledge that is what we are going to go forward with in terms of our decision. Again, whether its opinion, whether it's a variance or an appeal that's based on all of our interpretation of how we want to decide.

Mary Ann Lamkin, representative, stated that she was familiar with Slater. And I think if counsel had clearly delineated in her opinion what Slater was really about, I think you would understand there is a difference in terms of the way it applies. Slater deals with



MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

access and the LDA provided for access ability to properties who felt they could divide, get a bonus, if they provide an access and not left the property up to not having any other access to those parcels. So access is a requirement in certain types of splits. Slater dealt with that. If your going to apply for and accept the requirements for access, you have to fall within the criteria that local municipalities, private or public road requirements as applicable. So Slater was talking what is required in LDA in and of itself which is access. What I am saying to you is parcels that are beyond the split requirement, below 108, that are properties that are adjacent to each other, do not fall within the criteria of the private or public roads that are referenced in Slater. So, Slater is not on point here.

Colleen O'Connor, Township Attorney, stated that with all due respect, she is an attorney, and it is her job to interpret what the law is and relate this to the Board. It will ultimately be up to a judge to decide if Slater applied. It is the professional opinion of me and my law firm that Slater very much applies to this case. In fact, although I am very much aware that Slater deals with access, it gave municipalities broad power to enact over and above what the Land Division (she talks to Mary Ann Lamkin about her actions as she is referencing her thoughts on Slater) Ms. O'Connor then read a quote right out of Slater, and stated that you may disagree with me, but ultimately its not going to be up to you, your not an attorney. It's going to be up to a judge who is also an attorney.

Mary Ann Lamkin tried to respond to Ms. O'Connor's comments.

Colleen O'Conner stated that we are not going to argue here tonight. We are not going to do what we did last meeting.

Mary Ann Lamkin stated that in fairness what she is saying, is that you are taking the scope of Slater and your bringing it across in terms of how it affects this particular instance and it does not apply. She stated that she was not an attorney, but that she was a planner, and in order for her to have her AICP, I have to have qualifications that regard any kind of planning law. Further, she took it as a front and an offense for Ms. O'Connor to continually say to her or question what her background or authority is on this matter.

Chairman FLORENCE tries to interject to continue the hearing.

Mary Ann Lamkin stated she wanted it on the record just for that reason.

Colleen O'Conner, Township Attorney, stated for the record that it is very much the opinion of her office and she had consulted in depth with Larry Dloski, who is an expert on this, that Slater very much does apply to this case.

Chairman FLORENCE stated that for the benefit of the audience, the public portion had been opened for public comments at the October 12, 2004 meeting, and we do not intend to do that this evening since it was a continuation of that meeting.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

**MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.0504(A) and 10.0504(B) and 17-162(a)(viii)-Located on the east side of Romeo Plank, north of 23 Mile Road on the north side of 23 Mile Road, east of Romeo Plank Road; Section 17; Romeo Plank Investors, Inc., Petitioner. Permanent Parcel No. 08-17-402-005 and 08-17-477-001. The variances were denied based on the following four (4) reasons and on upholding the Assessor's decision based on the conformance of the parcel and all the evidence that has been cited:**

- 1. Compliance with all other applicable Township Ordinances codes, provisions, standards, rules and regulations which regulate and control the division and/or development of and would not unreasonably prevent the owners from using the property. In this case the split/combo request could be approved if the Wade Nursery property would be brought up to Macomb Township standards; i.e., Zoning Ordinance, Road Development Improvement and Engineering Design and Construction Standards and fire codes. Other new parcels created for nurseries and structures planned in Macomb Township will be required to comply with applicable zoning and development requirements which is evidence that the proper standards would not be unnecessarily burdensome.**
- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the development of nurseries in Macomb Township. Other owners are or will be required to comply with all applicable development codes and ordinances. As a result the other property owners do not have the opportunity to make use of improperly zoned land or be relieved from the requirement of complying with Township development standards.**
- 3. There is nothing unusual about the parcel in question that sets it apart from other parcels in the area or in Macomb Township. There is nothing to prevent any part of the property from being developed in accordance with the standards of Macomb Township. For example, there are no significant grade differences or natural features such as a stream on the west portion of the property fronting on Romeo Plank or wetland to prevent full use of the west portion of the parcel according to the ordinances as written.**
- 4. The undersigned could recommend support for the development of the property if a proposal is presented that can meet the zoning and development codes of the Township. It is recognized that the current proposal is an attempt for the petitioner to develop the east side of the river with a use separate from the west side of the river. However, the application makes no attempt to address the non-conforming status of the parcel on either side of the river including the Wade Nursery. It is therefore necessary that a commitment be**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

made by the owners of subject property to comply with the Zoning Ordinance for Open Air Business Uses, development standards of the Township and the standards of the Land Division Regulations for both sides of the river including that portion continued to be used by the Wade Nursery. Total plans are necessary to give the Township assurances that both sides of the river will meet the zoning and planning provisions of the Township.

Member POPOVSKI stated he was going on record to uphold the Assessor's decision based upon the nonconformance of the parcel, based upon all the evidence cited and all the recommendations from the Planners.

Member GALLAGHER stated he basically was going to say the same thing. He had an idea of how the Assessing Department works. This is not one persons decision, this is made in conjunction with the Building Official, Planning Department and Assessor. The Assessor may put her name at the bottom of the denial/approval letter. But it is based on research from all three departments, who have sufficient input into any decision that has been made by the Assessor. It was noted in the last meeting that the Assessor can deny this one and approve this one, or deny this one or approve this one depending which way the sun is shone that day. That's not the way it works. Its done through a group of people that are familiar with the ordinance and have the best interest of the Township at heart. That is why I uphold the Assessor's opinion.

Member SELVA stated she to voted to deny it based on the recommendation that the Township has the right to ask that the parcel be brought up to compliance with all the applicable ordinances, provisions, standards, safety issues and so forth.

Member GALLAGHER added that there had been mention of money being a factor and money has nothing to do with the decision we make one way or the other. Whether its going to put money in somebody's pocket or take money out of somebody's pocket, we really don't care.

Chairman FLORENCE stated he went on the record as a denial vote as well. In his particular specifics of this opinion, has not only to do with the four (4) items the Planner gave to us with his recommendation, but also because of the specifics of the case that was identified and also the fact the Township has a process that was stated last meeting that we have set standards and set regulations and set procedures to work with an Mr. Gallagher said, a committee of people to go through to determine whether or not Land Divisions are able to be approved or denied.

MOTION carried.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section: 10.0504(B) Request to reduce minimum road frontage from 300' to 224'.  
Located on the South side of 23 Mile Road, approx. 3000' East of North Avenue; Section 24; Frank D'Anna, Petitioner. Permanent Parcel Nos. 08-24-201-001 & 08-24-201-004.

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

The petitioner is requesting permission to create the above described parcel of property with 224' of frontage rather than 300' as required by the zoning ordinance. The current parcel is 12.751 acres and L-shaped, expanding to a width of 494.15'. The petitioner proposes to purchase 3.45 acres, measuring 168' x 914.94', to the west of the leg of the original parcel.

The property is zoned R-1-S and is vacant. The property to the east, south and west is also zoned R-1-S and contains vacant land, a golf course, and residential uses.

It is presumed that the petitioner plans to develop a single family subdivision. If so, the petitioner would currently have sufficient frontage to develop a street with only one tier of lots backing to the east property line. The platting process would require that a stub street be provided to the west to give access to the excluded parcel to the west fronting on 23 Mile Road.

The additional 3.45 acres combined with the rear portion of the petitioner's property would not be adversely impact on the any surrounding parcels, and would address a currently now long narrow parcel consider non-conforming.

**RECOMMENDATION:**

It is recommended that the variance request be granted for the following reasons:

1. The property can be developed as stated above with or without the combination of the original parcel and the parcel to the west.
2. The granting of the variance will aid in assisting the Township in the elimination of a non-conforming parcel that by its location, is dependent on its combination with adjacent parcels for development.

This recommendation is made with the understanding that the parcel in question will be developed for single family purposes and provide access to the 23 Mile frontage immediately west of it.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

A letter of support from the petitioner dated September 23, 2004 was read into the record.

Salvatore D'Anna stated he had no additional comments.

Member GALLAGHER asked if there was any long term agreement that would give you the opportunity to purchase the smaller piece in the future.

Salvatore D'Anna stated they did not, but had contacted the residence adjacent to them and she had promised them the first right.

Public Portion:

**MOTION by GALLAGHER seconded by SELVA to close the public portion.**

**MOTION carried.**

**The following resolution was offered by SELVA and seconded by GALLAGHER:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0504(B)-Request to reduce minimum road frontage from 300 feet to 224 feet; Located on the south side of 23 Mile Road, approximately 3,000 feet east of North Avenue; Section 24; Frank D'Anna, Petitioner. Permanent Parcel No. 08-24-201-001 and 08-24-201-004. The variance was granted based upon the recommendation as follows**

- 1. The property can be developed as stated above with or without the combination of the original parcel and the parcel to the west.**
- 2. The granting of the variance will aid in assisting the Township in the elimination of a non-conforming parcel that by its location, is dependent on its combination with adjacent parcels for development**

**and the parcel in question will be developed for single family purposes and provide access to the 23 Mile frontage immediately west of it.**

**MOTION carried.**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section: 10.311(F)(5) Request to allow a swimming pool to be located 7'4" from the house rather than 10' as required by the zoning ordinance. Located on West side of Ridgeway Drive, South of 24 Mile Road; Section 18; Mark & Sharon Jensen, Petitioner. Permanent Parcel No. 08-18-176-005.

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are follows:

The petitioner is requesting allowance to install a swimming pool to within 7'4" of their home on the above-described property. The pool will also extend 6' into a public utility easement on the rear portion of the lot.

NOTE: The petitioner advises that the Water and Sewer Department has already approved the location of the pool with respect to the easement.

The Township has in the past has granted variances allowing pools to be located closer than 10' to a residence with the understanding that prior to the variance becoming effective, the petitioners will sign a "hold harmless" agreement assuring the Township that any damage done to the residents by the pressure created by the pool. Also, damage done to private property owned by residents in utility easements where encroachments have been granted will be the financial responsibility of the petitioner.

**RECOMMENDATION:**

It is recommended that the variance request be granted with the following understandings:

1. The petitioner will receive approve from the Water and Sewer department and Township Board to encroach on the utility easement.
2. That the petitioner will provide for Township Attorney review a "hold harmless" agreement accepting the responsibility of any damage done to their home by the pool and that any damage done to private property in the utility easement also be the financial responsibility of the petitioner.

A letter of support was read from the petitioner dated October 4, 2004 into the record.

Mark Jensen, petitioner was in attendance, and indicated the pool was already installed. The contractor they hired never pulled the necessary permits and since is in litigation with them. He further noted he was here to bring everything into conformance.

Member GALLAGHER asked if it was an inground or above ground pool.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

Mark Jensen replied it was an above ground pool.

Jerome R. Schmeiser, Planning Consultant, stated the "Hold Harmless" agreement must go to the Township Attorney for review and approval.

Public Portion:

**MOTION by GALLAGHER seconded by POPOVSKI to close the public portion.**

**MOTION carried.**

**The following resolution was offered by POPOVSKI and seconded by SELVA:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0311(F)(5)-Request to allow a swimming pool to be located 7'4" from the house rather than 10 feet as required by the Zoning Ordinance; Located on the west side of Ridgeway Drive, south of 24 Mile Road; Section 18; Mark and Sharon Jensen, Petitioner. Permanent Parcel No. 08-18-176-005. The variance was granted upon the petitioner receiving approval from the Water/Sewer Department and Township Board to encroach on the utility easement and that the petitioner will provide for the Township Attorney to review a "hold harmless" agreement accepting the responsibility of any damage done to their home by the pool and that any damage done to private property in the utility easement also be the financial responsibility of the petitioner.**

**MOTION carried.**

8. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**  
Permission to vary section: 10.0404(A)(6) Request permission to create a 10 acre parcel with less than 300' of road frontage.  
Located at North end of Marseilles Drive, approximately 1/3 mile North of 22 Mile Road; Section 21; Thomas Becher, Petitioner. Permanent Parcel Nos. 08-21-326-001 & 08-21-376-001

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

The petitioner is requesting permission to combine two existing parcels without providing the required 300' of road frontage.

Although the current parcels have no immediate road frontage, they are provided with three 60' wide stub streets from adjacent single family development.

The property is zoned AG and is vacant.

It is noted that if the two parcels are combined, that a single family subdivision may be developed on the property with the understanding that the current stub streets to it will provide access for any future residence.

**RECOMMENDATION:**

It is recommended that the variance request be granted. Although no public major road frontage is currently provided, the stub streets developed by abutting subdivisions will provide adequate access for the site.

A letter of support was read from the petitioner dated October 5, 2004 into the record

Roy Serra, representative, was in attendance.

Member SELVA asked if the intention was to rezone the property to residential to be in conformance with the surrounding properties.

Roy Serra stated that was correct.

Jerome R. Schmeiser, Planning Consultant, stated the petitioner has already made those applications to the Township for those rezonings.

**Public Portion:**

Tom Gibbings, 49876 LaBaere, stated that is property backs up to the property in question and indicated that he was not opposed but was unclear on the request to have less than 300 feet of road frontage. He also noted that he did not know what his property would back up to with the final design.

Jerome R. Schmeiser, Planning Consultant, presented a handout of the "proposed" sketch of a residential subdivision.

Tom Gibbings stated that the lots looked to be substantially smaller than those in the surrounding subdivisions.



MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

Jerome R. Schmeiser, Planning Consultant, stated they were not.

Chairman FLORENCE stated that there were requirements set by the Township for lot sizes that are standard and that they do look to meet the standard.

Jerome R. Schmeiser, Planning Consultant, reviewed for those in attendance the “proposed” sketch in connection with the surrounding three subdivisions.

Tom Gibbings stated the property should be put into a neighborhood park.

Sasa Bjelica, 19276 Gloria, stated he had moved to his current location due to the wooded lot located behind his property.

Mike Calkins, 19500 Chalk Drive, stated he was concerned with what would go in there and how the property would join with the stub street to the west “Elmer”. He further noted that there would then be two street names with another subdivision that is separate from the other three and that there was probably a reason why the two parcels in question were omitted. Lastly, he asked if he could see the “proposed” sketch and what the lot sizes would be and hoped that there would some continuity.

Linda O’Meara, 19402 Gloria, stated she could see no reason to grant a variance for the benefit of one person versus the detriment of all the neighbors. She noted that she had been advised that the property value will decrease by \$5,000.00 to \$10,000.00 if those trees are ripped down. Lastly, she indicated that she had spoke to Jack Daily earlier in the day and the only reason the variance was needed was because the way the attorneys had wrote the ordinance and suggested if the a variance is needed that perhaps the ordinance rather than granting a variance if the ordinance is at fault. She closed by stating the township should leave some of the trees and it seems to be a waste. Were starting over from scratch by replanting trees.

Steve Eckhout, 19445 Chalk, stated he agreed with his neighbor Mike Calkins 100%. He indicated that he was not naïve that a street could continue there, but having the trees there is very nice. He noted that Yale Drive is becoming a drag strip from 22 Mile Road to 23 Mile Road, and that having another street coming through even though its not a major street going through a subdivision like Yale it would still create a nightmare at the intersection of our street and Yale. He stated his position was that he did not like to see growth but would prefer to see it left alone or turned into a park as mentioned earlier.

Roy Serra stated the petitioner has owned the property for over 20 years and has made his residence there knowing that in the future he would subdivide the property and make it into a subdivision.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

Tom Becher, petitioner, stated that when he had bought the property he has put in the waterline, gasline, etc. for this development. He stated he had plans made up from the early '70's and agreed that it would be nice to leave as a park and to never take a tree town. Further, he gave the guarantee to those who live in the surrounding subdivisions he would leave as many trees as were left when their houses were built.

Member GALLAGHER explained the variance request of the 300 foot of road frontage. He noted that when the surrounding property was being residentially developed they could see the property in question was land locked and that is why the Planning Commission required stub streets to be provided to those parcels.

**MOTION by POPOVSKI seconded by GALLAGHER to close the public portion.**

**MOTION carried.**

Jerome R. Schmeiser, Planning Consultant, again reviewed the "proposed" sketch and stated that the property could be developed without a variance but with the variance being granted it would create a better subdivision. He noted that all the lots are as large or larger than the surrounding subdivision lots. All the surrounding subdivisions originally had trees and all had been destroyed. The subdivision will be developed and meet all the requirements of the Zoning Ordinance.

**The following resolution was offered by GALLAGHER and seconded by SELVA:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0404(A)(6)-Request permission to create a 10 acre parcel with less than 300 feet of road frontage; Located on the north end of Marseilles; Section 21; Thomas Becher, Petitioner. Permanent Parcel No. 08-21-326-001 and 08-21-376-001. The spirit and intent of the Zoning Ordinance is being met and will be an asset to the Township.**

**MOTION carried.**

Member GALLAGHER made a comment to the lady who indicated her property value will be decreased. He stated he has never seen the property value decrease in the Township, even the property by the landfill has not decreased. If anything it will make it go higher. Once the land is used up, there is no more land.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

9. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary sections: 10.0704(A)(3)(b) and (c) Request to reduce width and depth of a lot.  
Located on South side of 24 Mile Road, East of Romeo Plank Road; Section 17;  
MSC Land Development, Petitioner. Permanent Parcel No. 08-17-201-002

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

The petitioner is requesting that lot 175 of the proposed Bridgewater Estates Condominiums be allowed with a depth less than 120' as required by the zoning ordinance. The lot is planned on a street that runs approximately parallel to the Clinton River with a curve in the proposed road at approximate location of the lot in question.

**RECOMMENDATION:**

It is recommended that the variance request be granted since the petitioner has little control over the location of the river.

This recommendation is made with the understanding that the petitioner will provide a footprint of the proposed residential structure to be placed on lot 175 to ensure that no future setback variances will be necessary.

A letter of support was read from the petitioner dated October 8, 2004 for the record.

Jerome R. Schmeiser, Planning Consultant, stated the petitioner has submitted an application into the Township for the development of a condo project, which is developed with the standards of the platting process. There will be a series of single family parcels, whether they become site condo or a subdivision plat does not make a difference. There will be a series of streets that have to run north and south into 24 Mile Road and are directed by the alignment of the river. The petitioner has diligently prepared a plan that will involve this highly irregular shape parcel. In order for the road pattern to work it has to curve very close to the river which creates a triangular shaped parcel. In order to reasonably develop lots on that road pattern next to the river, there must be a lot shorter in depth than allowed by the ordinance. He noted the Planning Commission has already considered the Preliminary Plan and has approved the plan with the very large lot and are now recommending that it be able to now be split into two nice lots.

Stacy Cerget, representative, was in attendance and thanked Mr. Schmeiser for working with her on the development of this plan.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

Public Portion:

Joanne Schatko, 17810 24 Mile Road, and asked when this plan was going to be reviewed by the MDEQ.

Stacy Cerget stated that they have not yet submitted into the MDEQ for approval yet, but would be doing so within the next month.

**MOTION by GALLAGHER seconded by POPOVSKI to close the public portion.**

**MOTION carried.**

**The following resolution was offered by POPOVSKI and seconded by GALLAGHER:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0704(A)(3)(b) and (c) Request to reduce width and depth of a lot; Located on South side of 24 Mile Road, East of Romeo Plank Road; Section 17; MSC Land Development, Petitioner. Permanent Parcel No. 08-17-201-002. The variance was conditioned that the petitioner will not no future setback requirements will be necessary.**

Member GALLAGHER asked for the exact dimension (feet/inches) of Lot 175 and the split for the additional lot from Lot 175. He indicated that he has withdrawing his support to the motion.

Member POPOVSKI stated he was withdrawing his motion to approve the variance.

**MOTION by POPOVSKI seconded by SELVA to table until January 11, 2005 to allow for exact dimensions being granted.**

**MOTION carried.**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

10. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section: 10.0704(A)(3)(b) and (c) Request permission to develop site condominium parcels with less than the required width and depth.  
Located on the Southeast corner of 25 Mile and Hayes Roads (excluding the immediate corner); Section 7; AC Enterprises, Petitioner. Permanent Parcel No. 08-07-100-016

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

The petitioner is requesting that the dimensions of lots in a proposed condominium project be allowed to be developed with a dimension shorter than required by the zoning ordinance.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the standard parcel depth would not unreasonably prevent the ownership from using the property as zoned. Other residential developments planned in Macomb Township will be required to comply with the same parcel dimensions, which is evidence that the proper standards would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the standard dimensions of the zoning ordinance. As a result the other property owners do not have the opportunity to make use of reduced standards for the development of a residential area.

There is nothing to prevent any part of the zoning ordinance standards from being maintained. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written. The street design as proposed does not allow for lot sizes to meet the minimum requirements of the zoning ordinance. There are, however, other design options available that can result in lot size that meet the minimum standards of the zoning ordinance.

3. The variance would amount to reducing the standard parcel depth by approximately 11%.

A letter of support was submitted by the petitioner dated October 8, 2004 in the record.

Stacy Cerget, representative, was in attendance and presented various proposed lot

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

layouts all showing that variances would be needed.

Stacy Cerget, representative, stated that a round-about was planned to be created at the intersection of 25 Mile Road and Hayes and that her client felt that having houses 100 feet from the intersection was detrimental. She stated that they strongly felt that the corner with single family residential so close to the round-about, if they were forced to put single family there, they would create a cul-de-sac so they could allow for 200 feet from the round-about to the residential. The Road Commission will not allow us to put another road to go through as shown in one of the exhibits.

Jerome R. Schmeiser, Planning Consultant, believed that those lots mentioned met the standard at the time.

A lengthy discussion followed regarding the proposed layout of the plat and the need for the variances.

Stacy Cerget stated that no matter what plan they went with a variance would still be needed for the interior lots.

Public Portion:

Terry Hood-Campion, 19095 Pinecone, stated the petitioner was not prepared and suggested that the Board move forward.

**MOTION by POPOVSKI seconded by GALLAGHER to close the public portion.**

**MOTION carried.**

**MOTION by SELVA seconded by GALLAGHER to deny the variance request of Section 10.0704(A)(3)(b) and (c) Request permission to develop site condominium parcels with less than the required width and depth; Located on the Southeast corner of 25 Mile and Hayes Roads (excluding the immediate corner); Section 7; AC Enterprises, Petitioner. Permanent Parcel No. 08-07-100-016. The variance was denied since the size of the lot was known and based upon the recommendations as follows:**

- 1. Compliance with the strict letter of the standard parcel depth would not unreasonably prevent the ownership from using the property as zoned. Other residential developments planned in Macomb Township will be required to comply with the same parcel dimensions, which is evidence that the proper standards would not be unnecessarily burdensome.**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the standard dimensions of the zoning ordinance. As a result the other property owners do not have the opportunity to make use of reduced standards for the development of a residential area.

There is nothing to prevent any part of the zoning ordinance standards from being maintained. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written. The street design as proposed does not allow for lot sizes to meet the minimum requirements of the zoning ordinance. There are, however, other design options available that can result in lot size that meet the minimum standards of the zoning ordinance.

3. The variance would amount to reducing the standard parcel depth by approximately 11%.

**MOTION carried.**

11. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary sections: 10.2107(D)(1) & 10.0311. Request to reduce to 80' road right-of-way to 70' right-of-way with accompanying setbacks from 68' to 60' Located on South side of 23 Mile Road, ¼ mile West of Romeo Plank Road (Macomb Technology Park); Section 20; Sims Road, LLC, Petitioner. Permanent Parcel No. 08-20-100-018.

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

The petitioner is requesting that the proposed north/south industrial collector road as referred to in the zoning ordinance and the accompanying setbacks for industrial setbacks be amended to reduce the collector road from 86' to 70' and the setback from 68' to 60'. The variance, if granted, would involve an amendment to the Master Plan and the Master Thoroughfare Plan.

The Master Plan indicates that the property in question and the property to the south is set aside for the development of industrial uses. The 86' road in question is part of a system planned to provide, as a primary access to these properties from 23 Mile Road.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

The Master Thoroughfare Plan indicates that the road in question has been planned as an 86' wide collector road. The planning intention for the road in question is to tie to an east-west collector road one half mile north of 23 Mile Road. The road is also intended to open up the balance of sections 19 and 20 to the south and west with primary access being from this area to 23 Mile Road. The details of the road system were to be finalized at such time as specific industrial development is planned.

The petitioner indicates as part of the submittal that the property to the south and west will ultimately developed for residential purposes. This position is in direct conflict with the proposals of the Master Plan.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the road width and setback requirements would not unreasonably prevent the ownership from using the property as zoned or planned. Other industrial roads and structures planned in Macomb Township will be required to comply with the same road and setback requirements of the Zoning Ordinance which is evidence that the proper driveway setback would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in industrial developments in Macomb Township. The other owners are or will be required to comply with the road and setback requirement. As a result the other property owners do not have the opportunity to make use of 13' of right-of-way or 8' of setback.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

A revised letter of support was submitted by the petitioner dated November 9, 2004 into the record.

Bob Kirk, representative, was in attendance and made a point of clarification that they were not asking for an amendment to the Master Thoroughfare Plan, but for a dimensional variance for the yard to the road. The reason for the request is that we only have 366 feet of frontage on 23 Mile Road, which is a result from the development of Nachi, which left a small portion. He stated they are looking to develop the property into an industrial sub and the road that comes through the property, the concrete width would not change with the variance. It would still be 36 feet wide, it's the matter of the right-of-



MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

way and setback. This would be a single load road, with lots on the west side. The granting of the variance would allow us to develop lots which comply with the ordinance in regards to total area (depth to width). Ideally, industrial lots need to be 300 feet in depth and with the variance we can get the depth to 296 feet in depth on all the lots. The right-of-way required is 86 feet and were asking for 70 feet. Again were not changing the width of the road and with regard to the setback were requesting that it go from 68 to 60 to develop the lots which comply with the ordinance.

Chairman FLORENCE asked if the road was currently in or planned.

Bob Kirk stated the road was not there, but that there was an existing drive, which would be removed and then build the road. He then noted the standard for the dimensional variance would be a practical difficulty and based upon the 366 feet of frontage that the uniqueness of the parcel warrants such a variance.

Guy Rizzo, petitioner, stated this particular project with the width along 23 Mile Road, offers extreme hardship of building a road of 700 to 800 feet and is loaded one sided only and the lots are extremely narrow. We want to keep the road at 36 feet, that stays the same, but we need the extra 16 feet to give us the additional depth so these lots are much more buildable. Typically the depth of industrial sites are 300 feet or more. The 16 feet gets it closer to the 300 feet and makes it much more developable and economically feasible. When you have single loaded lots, the price goes up and we want to make sure the project is in line and still be able to bring tenants in and keep the price under control. That is the reason why we think that is definitely a hardship and we are asking you to grant us a variance.

Member GALLAGHER stated that our ordinance only requires 250 feet of depth.

Bob Kirk stated that the ordinance requires 250 of depth and 150 of width and if you multiple the two you don't get the minimum of area required which is one acre.

Member GALLAGHER stated those dimensions given are only minimums. You can change the width to come up with the acre.

Bob Kirk again stated then when developing industrial, you don't want to develop east/west, because the buildings typically have a small office in the front a large warehouse in the back. That is why your width is less than your depth. Generally it's a rectangular development.

Member GALLAGHER stated it could be developed.

Bob Kirk stated that is how industrial buildings are marketed, sold and developed.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

Guy Rizzo noted that there really is not other traffic. The road itself, the width will not change, 36 feet. What it does, it makes the lots a little bit deeper, which makes them more proportionate and easier to market.

Member GALLAGHER stated the Zoning Board of Appeals can not grant a variance on convenience. As long as this property can be developed according to the ordinance we can not grant you a variance.

Guy Rizzo indicated that it could not be developed economically.

Bob Kirk stated the test is that a practical difficulty exists. It doesn't mean that it can't or it's impossible. Practical difficulty, which is less than an undue hardship.

Public Portion: None.

**MOTION by SELVA seconded by POPOVSKI to close the public portion.**

**MOTION carried.**

**MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.2107(D)(1) & 10.0311. Request to reduce to 80' road right-of-way to 70' right-of-way with accompanying setbacks from 68' to 60' Located on South side of 23 Mile Road, ¼ mile West of Romeo Plank Road (Macomb Technology Park); Section 20; Sims Road, LLC, Petitioner. Permanent Parcel No. 08-20-100-018. The variance was denied based on the recommendations as follows:**

- 1. Compliance with the strict letter of the road width and setback requirements would not unreasonably prevent the ownership from using the property as zoned or planned Other industrial roads and structures planned in Macomb Township will be required to comply with the same road and setback requirements of the Zoning Ordinance which is evidence that the proper driveway setback would not be unnecessarily burdensome.**
- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in industrial developments in Macomb Township. The other owners are or will be required to comply with the road and setback requirement. As a result the other property owners do not have the opportunity to make use of 13' of right-of-way or 8' of setback.**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

**There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.**

Guy Rizzo added that the collector road dead ends at 22 ½ Mile Rod and will not go all the way through to 22 Mile Road. You can't have a collector road going through a future residential development.

**Member POPOVSKI stated he recommended denial since there was not substantial evidence proven that there is a practical difficulty.**

**Member GALLAGHER stated the property could be developed according to our ordinance as it stands. There is no need for a variance. The variance is only a convenience for the developer, its got nothing to do with the property. The minimum lot depth is only 250 foot, he can adjust the width to get his one acre parcels that he needs. He says he can't market a building that's length way on the property. I'm not sure he can't. We're here to uphold the ordinance of the Township. To grant variances when necessary, there is no necessity for a variance here in my opinion.**

**Member SELVA stated the lot lines can be changed and the dimensions changed so that it meets, matches or exceeds the Township Ordinances.**

**Chairman FLORENCE stated the especially based on the 250 foot depth is the minimum there is room enough to put a full road in there with the setbacks without any of the variances and still get acceptable properties.**

**MOTION carried.**

12. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary Section: 10.0404(A)(6) Request to reduce the parcel width from 300' to 71'.  
Located on South side of 24 Mile Road, 1/4 Mile East of Romeo Plank Road;  
Section 16; Macomb Intermediate School District, Petitioner. Permanent Parcel No. 08-16-100-017

Chairman FLORENCE read the findings and recommendations of November 4, 2004. They are as follows:

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

The petitioner is requesting that the MISD be allowed to combine a parcel with the above described parcel. The purpose of this request is to provide access from the southeast corner of the MISD property with Woodside Drive as extended to the north. Although it is recognized that ultimately a drive could be provided with the development of the property lying adjacent to the MISD property, the school board is expecting that the need for the driveway will be necessary prior to the development of the adjacent property.

It is the intention of the petitioner to combine the parcels and develop a driveway in accordance with the standards of the Township. The driveway will also be designed to tie in with Woodside as extended.

The zoning ordinance requires 300' of frontage for the creation of new parcels whereby the petitioner is only able to provide 86'.

**RECOMMENDATION:**

It is recommended that the variance request be approved for the following reasons:

1. The driveway as proposed by the petitioner will provide access from a school site to abutting residential areas.
2. The variance will allow the construction timing of the driveway prior to ultimate development of the property to the east.

There was a letter of support was submitted by the petitioner dated November 12, 2004 into the record.

Mike DeVault, Superintendent of MISD, gave a brief background of his knowledge of the schools with the county and the growth that is being encountered. He reviewed the schools that are currently in operation and housing the special needs children. He wanted to go on record indicating that the citizens of Macomb have been very generous over the number of years taking care of the special needs children. We are requesting a variance from Woodside on the south side of the property. He stated the request is a joint development with Chippewa Valley School District since they are growing at approximately 500 students a year. This project has been supported by all 21 county superintendents. Further, he noted that the proposed site plan would be built according to all the standards of the Township.

Member GALLAGHER thanked the for coming to the board since its not required.

Member POPOVSKI stated the proposal seems to be very though out.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

Public Portion:

Terry Campion, 19095 Pinecone, stated we need this school in the north end. There are no schools north of 23 Mile Road. If we don't have a school granted on this property, the property values in the north end will suffer. There are several homes in the area that are not selling as a result. Lastly, she stated she was all in favor of having the school.

Kathy Bowles, 18823 Pinecone, stated she supported the school, but the issue of Woodside Trail being a collector road needs to be looked at as to where it pushes out onto 23 Mile Road and Romeo Plank. There is a constant back-up of cars past Woodside Trails at 23 Mile Road and Romeo Plank heading west. She was not sure how they were going to get 300 people in school, out of school onto Romeo Plank. She questioned if there was anything planned to widen those roads.

Bill Westrick, representative, stated there is a project planned with the Road Commission, which will widen the bridge and alleviate the traffic problems. They are planning that for next year.

Member SELVA noted the plan does show for a driveway out to 24 Mile Road.

Bill Westrick stated if they could not do the project they could not provide a walkway.

Terry Campion stated a walkway would be a plus.

Joanne Schatko, 17810 24 Mile Road, stated there was word out that in 2005 the Macomb County Road Commission would repair the 23 Mile Road bridge.

Keith Bowles, 18823 Pinecone, stated he wanted the school, but the bridge at 23 Mile Road and the surrounding infrastructure may not support the traffic coming off of Woodside. In addition, they are building a Montessori School on the south side of 23 Mile Road, so there will be a lot of traffic in that specific area and wants to know they are aware of traffic ramifications. He indicated that he wanted to have the infrastructure in place to support this amount of traffic, and preferred it not be a bus load of kids going to one of those schools.

Terry Campion asked about the assistance that would be given to the Township with the paving of 24 Mile Road.

Bill Westrick stated a week and half ago he had attended a meeting at the Road Commission and all of the developers were there and they are combining together to pave 24 Mile Road up to the Town Center and should be next year. Further, the school has agreed to pay their actual cost for ½ the road across the frontage.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

**MOTION by GALLAGHER seconded by POPOVSKI to close the public portion.**

**MOTION carried.**

**The following resolution was offered by GALLAGHER and seconded by SELVA:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0404(A)(6) Request to reduce the parcel width from 300' to 71'; Located on South side of 24 Mile Road, 1/4 Mile East of Romeo Plank Road; Section 16; Macomb Intermediate School District, Petitioner. Permanent Parcel No. 08-16-100-017. The variance was granted based upon the recommendation as follows and gives a much need access to the residential areas and the ability for the children to walk to school safely. In addition the driveway does extend to 24 Mile Road which will disperse the traffic so its not all coming down into the residential area.**

- 1. The driveway as proposed by the petitioner will provide access from a school site to abutting residential areas.**
- 2. The variance will allow the construction timing of the driveway prior to ultimate development of the property to the east.**

**MOTION carried.**

**13. OLD BUSINESS**

None.

**14. NEW BUSINESS**

None.

**15. PLANNING CONSULTANTS COMMENTS**

None.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
NOVEMBER 9, 2004

16. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN  
CONNECTION WITH THIS AGENDA

**MOTION by GALLAGHER seconded by SELVA to receive and file all  
correspondence.**

**MOTION carried.**

ADJOURNMENT

**MOTION by POPOVSKI seconded by GALLAGHER to adjourn the meeting at 9:45  
P.M.**

**MOTION carried.**

Respectfully,

---

Brian Florence, Chairman

Beckie Kavanagh, Recording Secretary  
/bk